HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.162 of 2007

Between:

Medical Council of India,
represented by its Secretary,
New Delhi.

... Appellant

And

Dr. P. Srinivas and three others.

... Respondents

::JUDGMENT::

Counsel for the appellant : Shri S. Niranjan Reddy

Counsel for respondent No.1 : Shri K. Pratap Reddy, Senior Advocate, assisted by Shri T. Srikanth Reddy

Counsel for respondent No.2 : Shri A. Rajashekar Reddy, Assistant Solicitor General.

Counsel for respondent No.3 : Government Pleader for Medical & Health.

Counsel for respondent No.4 : Shri D.V. Nagarjuna Babu

Febuary 26, 2007

Per G.S. Singhvi, C.J.

This appeal is directed against order dated 11-12-2006 passed by the learned Single Judge in WPMP.No.18754 of 2006 in Writ Petition No.15057 of 2006, whereby she stayed resolution dated 5-8-2005 issued by the Medical Council of India (the 'MCI') and the consequential action taken by NTR University of Health Sciences,

Vijayawada (for short, 'the university') to enable the teaching faculty of M.D. (Venereology) to continue as teaching faculty, including Examiners in the Departments of Dermatology, Venereology and Leprosy.

In the writ petition filed by him, respondent No.1 – Dr. P. Srinivas has questioned the legality of the decision of the MCI to treat M.D. (Venereology) at par with M.D. (Dermatology) mainly on the ground that the same is ultra vires the provisions of the Indian Medical Council Act, 1956 (for short, 'the Act') and the Medical Council of India (Minimum Qualifications for Teachers in Medical Institutions) Regulations, 1998 (for short, 'the 1998 Regulations'). It is the case of respondent No.1 that without amending the 1998 Regulations, which are statutory in character, the MCI cannot equate M.D. (Venereology) with M.D. (Dermatology). He also filed an application for interim relief and prayed that the decision of the MCI to equate M.D. (Venereology) with M.D. (Dermatology) and the consequential action taken by the university should be stayed.

The learned Single Judge briefly adverted to the case set up by respondent No.1 and opined that the decision of the MCI is not in consonance with the statutory provisions and those possessing post-graduate qualification in Venereology are not qualified to take up the teaching or to act as Guides or Examiners in the departments of Dermatology, Venereology and Leprosy. Accordingly, she suspended the decision of the MCI and consequential action taken by the university.

Sri S. Niranjan Reddy, learned counsel for the appellant assailed the order under challenge by arguing that the MCI has the power to determine equivalence of the degree and resolution dated 5-8-2005 passed by it equating M.D. (Venereology) with M.D. (Dermatology) does not suffer from any legal infirmity. He further argued that till the decision of the MCI is annulled, the teachers possessing the qualification of M.D. (Venereology) cannot be deprived

of their legitimate right to act as Examiners in the departments of Dermatology, Venereology and Leprosy and the learned Single Judge committed a serious error by staying the decision of the MCI. He submitted that the interim order passed by the learned Single Judge has the effect of virtually allowing the writ petition filed by respondent No.1 and such an order could not have been passed without considering the important factors i.e. balance of convenience, irreparable injury and public interest.

Sri K. Pratap Reddy, learned senior counsel appearing for respondent No.1 argued that the decision taken by the MCI to equate the degree of M.D. (Venereology) with M.D. (Dermatology) or with combined degree of M.D. (Dermatology, Venereology and Leprosy) is ex facie violative of the provisions of the Act and the 1998 Regulations and the learned Single Judge did not commit any error by suspending resolution dated 5-8-2005. Learned senior counsel emphasized that the 1998 Regulations framed under Section 33 of the Act are statutory in character and without amending the same, the Executive Body of the MCI could not have equated the qualification of M.D. (Venereology) with M.D. (Dermatology) etc.

We have given serious thought to the entire matter. Since the writ petition is pending adjudication before the learned Single Judge, we do not consider it proper to express any opinion on the merits of the case. The admission of the writ petition is indicative of the existence of prima facie case in favour of the petitioner. However, that by itself should not have been treated by the learned Single Judge sufficient for staying the resolution impugned in the writ petition. It is trite to say that before passing an interim order, the Court must feel convinced that the elements of

prima facie case, balance of convenience, irreparable injury and public interest are in favour of passing an order of injunction or stay.

A reading of the order under challenge shows that the learned Single Judge passed the impugned order simply because she felt

convinced with the prima facie nature of the case set up by respondent No.1. The learned Single Judge did not even advert to the factors like irreparable injury, balance of convenience and public interest. In our opinion, non-consideration of the important factors, which have bearing on the grant or rejection of the prayer for interim relief has resulted in substantial failure of justice inasmuch as those possessing the qualification of M.D. (Venereology) have been deprived of their legitimate right to teach the students of other specialties which have been equated with Venereology and to act as Guide and Examiner in those specialties despite the fact that none of them has been impleaded as a party to the writ petition.

We are further of the view that the factors like balance of convenience, irreparable injury and public interest were clearly against the grant of interim injunction. If the writ petition filed by respondent No.1 is finally allowed, the Court may annul the resolution passed by the MCI. However, till that happens, there can be no justification for stultifying the right of those possessing the qualification of M.D. (Venereology) to act as Teachers, Guides and Examiners in accordance with resolution dated 5-8-2005.

For the reasons mentioned above, the appeal is allowed. The order of the learned Single Judge is set aside. Looking to the nature of the case, we request the learned Single Judge to accept the prayer made by learned counsel for either of the parties for out of turn hearing. The Registry is directed to list the main petition before the single bench on 19-3-2007.

As a sequel to disposal of the main appeal, WAMP.No.274 of 2007 filed by the appellant is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

February 26, 2007

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